JUN 25 1957
JOHN T. FEY, Clerk

No. [redacted]24

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 24,370

MASTERS MAIL ORDER COMPANY OF WASHINGTON, D. C., INC.,
Defendant-Appellant

v.

GENERAL ELECTRIC COMPANY, *Plaintiff-Appellee*

On Appeal from the United States District Court for the Southern District of New York

APPELLANT'S APPENDIX

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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GENERAL ELECTRIC COMPANY, *Plaintiff*,

v.

MASTERS MAIL ORDER COMPANY OF WASHINGTON, D. C., INC., *Defendant*.

APPELLANT'S APPENDIX

Statement Required by Rule 15(b) of the Rules of This Court

The title of this case and the respective parties are named above. The original attorneys appeared at the trial of the case.

The complaint was filed in the United States District Court for the Southern District of New York on May 28, 1954. Issue was joined by the service of answer on August 31, 1954. The case was tried before the Honorable Alexander Bicks, sitting without a jury, on March 22, 1955. All of the evidence was submitted in the form of a stipulation between the parties.

Judge Bicks filed his opinion, incorporating findings of facts and conclusions of law, on October 3, 1956. A final judgment was entered on October 24, 1956, granting part of the injunctive relief prayed for by plaintiff, insofar as it sought an injunction with respect to transactions by the defendant with residents of New York and denying the same insofar as an injunction was sought as to transactions between the defendant and residents of other states. On October 28, 1956 defendant filed its notice of appeal. The record was certified to this Court on October 29, 1956.

Judgment of the Trial Court

Plaintiff herein having commenced this action for an injunction permanently restraining the defendant from advertising, offering for sale and selling at retail, certain appliances manufactured and sold by plaintiff and bearing plaintiff's trademark, "General (GE) Electric", which are the subject of fair trade agreements entered into by plaintiff and various retailers in New York, New Jersey and all other States having similar fair trade laws; and this cause having come on for further and final hearing; and the issues having been tried before the Court without a jury and the evidence of all the parties hereto having been heard; and the Court having rendered its opinion (constituting its findings of fact and conclusions of law) filed herein October 3, 1956, in which it was found that defendant had advertised, offered for sale and sold the aforesaid appliances in the State of New York at prices below the minimum retail resale prices stipulated therefor by plaintiff in accord with agreements entered into pursuant to the Feld-Crawford Act between plaintiff and various retail dealers throughout the State of New York; and the Court having found that plaintiff failed to prove that defendant is making resales of the aforesaid appliances in the States of New Jersey, West Virginia, Virginia, Pennsylvania, Ohio, Massachusetts, Delaware, Connecticut and Maryland;

Now, therefore, it is

ORDERED, ADJUDGED AND DECREED that the defendant, its successors and assigns, their officers, agents, employees and all persons acting under their authority or control and each of them be, and they hereby are, permanently enjoined and restrained from advertising, offering for sale or selling at retail in the State of New York, portable appliances, radios, clocks, automatic blankets, fans, heaters, heating pads and vacuum cleaners, manufactured and sold by plaintiff and bearing plaintiff's trademark "General (GE) Electric" at prices below the minimum retail resale prices established by the plaintiff therefor from time to time in accord with agreements entered into pursuant to the Feld-Crawford Act between plaintiff and various retail dealers throughout the State of New York which agreements at the time of the filing of the complaint herein were, now are or may hereafter be in force in the State of New York relating to the sale or resale of any of the aforesaid General Electric products in that State; and it is further

ORDERED, ADJUDGED AND DEGREED that plaintiff's prayer for an injunction restraining the defendant from advertising, offering for sale or selling the aforesaid General Electric products at prices below the aforesaid minimum retail resale prices stipulated in accord with fair trade agreements entered into between the plaintiff and various retailers in the States of New Jersey, West Virginia, Virginia, Pennsylvania, Ohio, Massachusetts, Delaware, Connecticut and Maryland pursuant to fair trade laws in force in those States be, and the same hereby is, denied; and it is further

ORDERED, ADJUDGED AND DECREED that jurisdiction of this cause is retained for the purpose of giving full effect to this judgment and for the purpose of making such further and other orders and decrees, or taking such

further action, if any, as may become necessary or appropriate to carry out and enforce this judgment.

Service of a copy of this judgment on defendant's counsel shall be deemed good and sufficient notice to defendant.

/s/ Alexander Bicks
Alexander Bicks,
U.S. District Judge.

Dated: October 24, 1956.

Opinion of the Trial Court, Including Findings of Fact and Conclusions of Law

Bicks, D. J.

Plaintiff, General Electric Company, a New York corporation, here seeks an injunction against Masters Mail Order Company of Washington, D.C., Inc., a Maryland corporation.[1] To support its claim, G. E. argues that Masters advertises, offers for sale, sells and delivers G. E. appliances, for example, in New York below resale prices fixed by G. E. in contracts with other New York retailers pursuant to New York's Feld-Crawford Act.[2] As a result, G. E. claims Masters has damaged G. E.'s "lawful distribution system and the maintenance of its retail fair trade program in New York," and other states with like fair trade laws.

In reply, Masters urges principally that Feld-Crawford, along with similar state "fair-trade" laws, do not proscribe its conduct in "fair-trade" states. Were state "fair-trade" construed to cover Masters' sales, defendant goes on, such state laws would impose an undue burden on interstate commerce and must, under the Supremacy Clause, fall by reason of the Sherman Act.[3]

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[1] The demand for a money judgment was withdrawn at trial.

[2] N.Y. Gen. Bus. Law, 369-a et seq.

[3] 15 U.S.C. §§ 1-7.

To these issues I now turn.

Feld-Crawford, in relevant part, makes "actionable" at the suit of any "person damaged thereby * * * advertising, offering for sale, or selling any commodity" below resale prices fixed in accord with Feld-Crawford's terms. Do Masters' activities, then, come within Feld-Crawford's ban?

Since the enactment of the McGuire Act,[4] the parties here stipulate, "G. E. has entered into over 12,000 written fair trade agreements with retailers, including over 1,200 in New York and New Jersey alone." G. E.'s contracts, Masters also agrees, cover only appliances "in fair and open competition * * * with appliances of the same general class produced by others." And the parties stipulate, "G. E. has systematically and repeatedly given notice" of "fair-trade" agreements as well as "diligently and vigorously enforced" their terms. As part of this enforcement plan, "G. E., since July 14, 1952, has instituted in excess of 834 * * * [court] actions * * * including 410 in New York and New Jersey."

One of these enforcement suits, brought in New York in late 1952, was against Masters Inc., a New York retailer. In that action, Masters (New York) was enjoined from violating G. E.'s fair-trade agreements. For flaunting that state court injunction, Masters (New York) was fined twice in early 1953. A few months later, Masters (New York) organized defendant here, Masters (Maryland). Masters (New York) owned all Masters' (Maryland) stock. The same man served as President of both companies. About a year later, but after suit here, the parties stipulated that "defendant was dissolved as a Maryland corporation." And since then, its "business * * * has been carried on by a corporation bearing the same name but organized under the laws of the District of Columbia * * *"

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[4] 15 U.S.C. § 45.

Soon after these corporate convolutions, Masters itself emblazoned its purpose in advertisements scattered throughout New York:

> It's Becoming A Crime To Offer Bargains.
> Masters recently paid * * * a penalty of $1750 to G. E. for cutting fixed prices * * * Masters had continued to give its customers bargains despite court orders so that the discount house was found guilty and had to pay the penalty.
>
> Masters Mail Order Company of Washington, D.C. Inc. has been established in Washington, D.C. because it is a non fair trade area. This means we are permitted from Washington, D.C. to offer you anywhere in the country sensational discounts on famous brands.

To insure its goal of frustrating Feld-Crawford, Masters (New York) dictated the every move of Masters (Maryland). Thus, according to the parties' stipulation, the "President, Vice President, Secretary" and "Treasurer" of Masters' (Maryland) were "all * * * officers, employees, directors or agents of" Masters (New York). These officers of Masters (Maryland), the parties further agree, continued to occupy the very New York office space "occupied by them as officers, directors, employees or agents of" Masters (New York). Masters' (Maryland) "books and records", its "cash receipts and cash disbursements, general ledger, unpaid bills file" and "duplicate sales tickets" were kept at offices of Masters (New York). A "daily report" of defendant Masters' receipts, cash disbursements and shipments" was sent on to Masters (New York). Indeed, "the only person authorized to sign checks on "defendant's behalf" was the very individual who served as principal officer of Masters (New York). It was he who, defendant agrees, "supervised defendant's business by regular daily telephone calls * * * by mail," and by visits to Washington. From all this an unblurred picture emerges: Though

puppet Masters (Maryland) held the Washington stage, its strings were pulled by Masters (New York).

It is against this background of defendant's birth and life as a convenient creature of Masters (New York) that defendant's activities take on their true meaning. Building again on stipulated facts, "Defendant's President," the top official of Masters (New York), "had supervision and control of the preparation and publication" of defendant's "mailing piece[s]." This "supervision and preparation," moreover, "was principally carried out" in offices of Masters (New York). These "mailing piece[s]" typically proclaimed that "Masters recently paid * * * a penalty * * * to G. E. for cutting fixed prices"; that "Masters Mail Order Company * * * has been established in Washington, D.C., because it is a non fair trade area"; that "[t]his means *we* are permitted from Washington, D.C. to offer you anywhere in the country sensational discounts on famous brands"; and that, to exploit this opportunity, recipients should "use the handy order form." [Underscoring added.] Some "325,000 copies" of this circular were "printed" in New York, "delivered to Masters" (New York), and "addressed" "at the request of" Masters' (New York) officials, with "Addressograph plates owned by Masters" (New York), to "persons on the mailing list of Masters (New York)." With "postage charges" paid initially by Masters (New York), these circulars "were shipped by truck to Washington, D.C., and from there were mailed to prospective customers in New York, New Jersey, and other fair trade States."

Again, the parties have stipulated that "preparation" of the "order blanks" was "supervised," and "controlled" and paid for in New York by officials of Masters (New York). Some copies "were sent to defendant * * * in Washington, D.C." Others "were retained by Masters (New York)" and "kept * * * behind the appliance

counter at its place of business in New York City * * *." These copies "were distributed by" Masters (New York) "employees * * * at its New York store to persons who sought to buy G. E. appliances at less than fair trade prices or who asked for order blanks for "your Washington store." Moreover, the stipulation goes on, Masters' employees were instructed to inform such persons that if they so desired they could obtain GE fair traded appliances at less than fair trade prices from defendant by mail orders sent to the District of Columbia." Following up such inquiries from Masters' (New York) customers who sought "GE appliances at less than the fair trade price," Masters (New York) wrote each a letter "accompanied by copies of * * * [Masters' (D.C.)] mail order form with the mail order patron typed in by an employee of Masters (N.Y.)." Finally, "In at least one instance, an employee of Masters of New York wrote in the name of a prospective New York purchaser on an order blank and mailed it to the purchaser to be filled in, signed and forwarded to Masters of Washington."[5]

Masters' (Maryland) "order blanks" then were passed out over the counter in Masters' (New York) store. Further, Masters' (Maryland) advertising letters were posted in New York to Masters' (New York) New York customers directing them to Masters (Maryland). This much, standing alone, would suffice to make up "advertising" within Feld-Crawford.

But Masters (Maryland) did more. Posting some 300,000 copies of its "mailing piece," prepared in New York, printed in New York, addressed in New York to "persons on the mailing list of Masters (New York)" also consti-

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[5] *General Electric Co.* v. *Masters Mail Order Co.*, 122 F. Supp. 797, 799-800 (S.D.N.Y. 1954). Masters (New York) connection with defendant's operations are indeed so close that this Court, in an analogous proceeding involving principally defendant Masters' operations, felt that a "searching inquiry" was required to determine whether Masters (New York) was in contempt of its New York injunction. See *Sunbeam Corp.* v. *Masters Inc.*, 124 F. Supp. 155, 160 (S.D.N.Y. 1954).

tutes "advertising". Feld-Crawford cannot be dodged by the "gimmick" of posting in Washington. No more than if a company's nearest post office was across a state line, or if an "ad", posted in New York and addressed to a customer in New York chanced as a matter of postal convenience to traverse another state, can defendant's Washington mailing circumvent Feld-Crawford. Defendant's "object," as one court reasoned in an analogous case, "could not be attained except by delivery of the matter to prospective customers * * * [T]his end could as well be reached by use of the mails as by the physical presence of the absent dealer in the state." [6] Clearly, Masters' (Maryland) activities constitute "advertising" in New York within Feld-Crawford.

Defendant's activities, in like fashion, fall within Feld-Crawford's ban on "offering for sale, or selling" in New York below "fair trade" prices. Indeed, defendant's "ad" concededly mailed to New Yorkers, proclaims, "We * * * *offer* you * * * SENSATIONAL DISCOUNTS ON FAMOUS BRANDS." Corroborating this ad's design as an offer, Masters (New York) advised would-be purchasers of G. E. appliances: "Thank you for your recent mail order * * *. A court injunction obtained against us * * * prevents us from selling this merchandise to you at below the Fair Traded List Price * * * Masters Mail Order Company of Washington, D.C., Inc., *offers* the merchandise you ordered at a substantial discount." [7] [Underscoring added.] All that was left for the New York customer to do was insert his name, address and specify the appliance desired on the accompanying order form. A New Yorker's mailing this order form here converted defendant's offer to a contract to sell.[8]

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[6] *State* v. *Davis*, 87 S.E. 262, 265 (W. Va. 1915); see *United States* v. *Thayer*, 209 U.S. 39, 43 (1908).

[7] Rec., Ex.'s E, F.

[8] Restatement of Contracts, § 25, (3).

True, defendant's mail order forms state "This order is subject to acceptance by Masters Mail Order Company, Inc., in Washington, D.C." Equally true, however, there is no evidence this caveat has any semblance of a business meaning: The record reveals not one instance where defendant in fact did not accept a customer's offer or even questioned his credit.[9] In this context, then, as the Supreme Court put it, "acceptance was a mere formality since one hardly incurs the cost of soliciting orders to reject."[10]

Responding to these orders, defendant's mailing of appliances to New Yorkers constituted "selling" in New York. At the outset, title passed here. Thus, Uniform Sales Act Section 19 specifies that "[i]f the contract to sell requires the seller to deliver the goods to the buyer * * * or to pay the freight or cost of transportation to the buyer * * * the property does not pass until the goods have been delivered to the buyer * * *".[11] Defendant's practice, of course, is "to deliver the goods to the buyer in New York. On these New York deliveries defendant did not charge or collect the District of Columbia sales tax.[12] Its mail order forms, moreover, explain, "It is understood that there is no charge for shipping". In accord with settled law, then, title passed in New York.

More important than such divinations as to title's passage, Feld-Crawford's design can best be gauged in terms of the mischief it sought to remedy. Feld-Crawford's prime aim, as the New York Court of Appeals expressed it, "'is to protect the property—namely, the good will—of the producer, which he still owns. * * *,

Old Heurlorn Distributing Co. v. *Seagram Distillers*

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[9] *Cf.* 1 Corbin, Contracts § 33 (1950).

[10] *Miller Bros. Co.* v. *Maryland*, 347 U.S. 340, 346 (1954).

[11] New York Personal Property Law § 100.

[12] D.C. Tax Regl. § 401 (14), 1 D.C. Register 9 (July 19, 1954), P-H D.C. Tax Serv. Par. 31, 540.60.

Corp., 229 U.S. 183, 193)."[13] That Act, the New York high court went on, "was manifestly aimed and designed to protect the good will of the owner or producer from injury when his trade-mark or name is employed in the resale of goods originally owned or produced by him * * * It proceeds upon the theory that the sale of identified goods at less than the price fixed by the owner of the mark or brand is an assault upon the good will, and constitutes what the statute denominates 'unfair competition'."[14] Applying that policy, the New York Court of Appeals has "squarely held that the statute applies to nonsignatories in interstate commerce;"[15] and specifically to out-of-state mail-order sales by a New York retailer.[16] The New York Court of Appeals, then, has proclaimed Feld-Crawford's design, and their construction binds this Court.[17]

It is that design which defendant's actions blatantly thwart. Originally, to repeat, Masters (New York) sold the very appliances at the same below fair trade prices to the very New Yorkers to whom defendant now sells. When the New York State Court enjoined Masters (New York), defendant Masters took over. Under the close rein of Masters (New York), defendant advertised, not in newspapers or magazines that reached New Yorkers, among others, but instead over the counter of Masters (New York) or via direct mailings prepared in New York by its New York parent and directed expressly to New Yorkers. Moreover, "part" of the very appliances

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[13] *Guerlain, Inc. v. Woolworth Co.*, 297 N.Y. 11, 17 (1947). See also *Bristol-Meyers Company* v. *Fisher*, 302 N.Y. 61 (1950); *Port Chester Wine & Liquor Shop* v. *Miller Bros.*, 281 N.Y. 101 (1939).

[14] *Guerlain* v. *Woolworth*, *supra*, at 18.

[15] *General Electric Co.* v. *Masters, Inc.*, 307 N.Y. 229, 241 (1954).

[16] *Razor Corp.* v. *Goody*, 121 N.Y.S. (2d) 882, affirmed 307 N.Y. 229, 240 (1954).

[17] *Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1938).

sent New Yorkers, defendant stipulates, had "been acquired from Masters (New York)" and shipped to Washington with an eye toward resale back to New Yorkers. Thus, though the form was altered, the substance was not. It was still in New York that defendant's goods were advertised, sold and delivered. It was in New York, moreover, that the effect of the very impact New York's Legislature proscribed was intended and felt. For Feld-Crawford to be anything short of a dead letter, defendant's activities must be held within its terms.

Feld-Crawford, so construed, finds sanction in the McGuire Act. McGuire seeks, in the language of its preamble, "to protect the rights of States under the United States Constitution to regulate their internal affairs and more particularly to enact statutes and laws, and to adopt policies, which authorize contracts and agreements prescribing minimum or stipulated prices for the resale of commodities and to extend the minimum or stipulated prices prescribed by such contracts and agreements to persons who are not parties thereto. It is the further purpose of this Act to permit such statutes, laws, and public policies to apply to commodities, contracts, agreements, and activities in or affecting interstate or foreign commerce." [18]

Implementing that purpose, McGuire paragraph (a) (3) exempts from antitrust interdiction the exercise of any right of action "created by * * * any State [against] wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price or prices prescribed in such contract or agreements * * *" And, McGuire paragraph 4 specifies exercise of such rights of action shall not "constitute an unlawful burden or restraint upon, or interfere with, commerce."

Paragraph 4's "purpose", the House Committee Report explained, "is to remove any obstacle, as far as

[18] 66 Stat. 631-632 (1952).

Federal Law is concerned, which might stand in the way of a broader interpretation of State fair-trade laws so as *to make them applicable to retail transactions and retail advertising which cross state lines.*"[19] (Emphasis added) To insure this goal, the House Committee modified the McGuire Bill. McGuire, as introduced, specified fair trade contracts might apply "'* * *' to persons *within the State* even though such persons are not parties thereto.' " (Emphasis supplied). Stricken by the House Committee, however, were the words "within the state." Thus, McGuire as reported out by the House Committee provided simply that fair trade contracts might bind "persons who are not parties thereto." And, settling the intent of the House, the House rejected a proposal to bar any cause of action with respect to interstate movements of commodities into or out of non-fair trade territory.[20] Finally, construing McGuire's language on the floor of the Senate, Senator Humphrey explained[21] "The bill will have this effect. It will require that where there are trade or branded names on which fair-trade prices have been established the mail-order house will sell them at those prices in any State, just as the local retail man is required to do."

Against this background, too clear for a challenge is that McGuire, as a learned brother has put it, was designed "to open all interstate commerce to the operation of state and fair trade actions * * * "[22] (sic) It is now settled law that a state may validly enforce its fair trade laws against a non-signing local vendee who sells into another

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[19] H.R. Rep. No. 1437, 82d Cong., 2d Sess. 2 (1952).

[20] 98 Cong. Rec. 4946. See also H.R. Rep. 1516, 82d Cong., 2d Sess. 17 (1952).

[21] 98 Cong. Rec. 8887.

[22] *Sunbeam Corporation* v. *Masters, Inc.*, 124 F. Supp. 155, 158 (S.D.N.Y. 1954). See also, *Sunbeam Corporation* v. *McMillan*, D.C., 110 F. Supp. 836 (D. Md. 1953).

state.[23] Though defendant here is located in a non-fair trade jurisdiction, its contacts with New York permeate its every operation and, viewed as a whole, compel the conclusion that defendant has made New York "resales" within McGuire.

It is the very pervasiveness of defendant's New York operations that distinguish this case from *Bissell Carpet Sweeper Co.* v. *Masters Mail Order Co.*, 140 F. Supp. 165 (D. Md. 1956) and *Revere Camera Co.* v. *Masters Mail Order Co.*, 128 F. Supp. 457 (D. Md. 1955). In *Bissell*, for example, the court concluded "sales are not made in Maryland by defendant," (140 F. Supp. 165, 172) and apparently viewed Masters' activities as involving no more than "advertising, offering for sale and selling in the District of Columbia" (*Id.* at 174). Similarly, the Revere court deemed Masters' "mail order business conducted from the District of Columbia" (128 F. Supp. 457, 462). Neither decision rests on detailed factual analysis of defendant's operations within Maryland. Such analysis of the proof of defendant's activities in and contacts with New York is so significant as to make inevitable the conclusion that defendant falls within Feld-Crawford.

In like fashion, the multitude of defendant's New York contacts obviates the necessity for entering the morass of legislative history surrounding rejection of the so-called Cole Amendment to McGuire (*Cf., Bissell Carpet Sweeper Co.* v. *Masters Mail Order Company*, 140 F. Supp. 165, 175-179). The case might be otherwise if the defendant had no connection with New York other than, for example, advertising in Washington or even New York newspapers and mailing merchandise requested in response to those ads.

Finally, defendant's dissolution after suit requires consideration of the propriety of awarding the injunctive

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[23] *Sunbeam Corporation* v. *McMillan*, 110 F. Supp. 836 (D. Md. 1953).

relief plaintiff seeks. Plaintiff's action was filed in September 1954. On October 18, 1954, however, the parties stipulated, defendant "was dissolved as a Maryland corporation. And since dissolution, their stipulation goes on, "the business of defendant, * * * has been carried on by a corporation bearing the same name but organized under the laws of the District of Columbia." The new corporation, defendant's transferee, uses the same name, assets, and below-fair-trade prices as defendant, and is wholly-owned, except for the qualifying shares, by the same stockholders that owned defendant. In short, only the bailiwicks have changed.

In *McComb* v. *Row River Lumber Co.*, 177 F. 2d 129 (9th Cir. 1949), the appellee argued much the same as does the defendant here. There the District Court denied an injunction and dismissed the complaint. During the pendency of the appeal, the successful party below dissolved and sold its assets to a successor corporation which continued the business. It then moved to dismiss the appeal, urging that having been dissolved it could not possibly continue the alleged conduct sought to be enjoined. Analogizing *Walling* v. *Reuter*, 321 U.S. 671 (1944), in which case an injunction below had issued, the court stated:

> The situation in the instant case seems to us to present an even stronger case [than *Walling* v. *Reuter*] for retaining the appeal and adjudicating the merits, because if we dismiss the appeal appellant cannot fall back on his lower court judgment and possibly enforce it against the successor corporation.

Maryland law expressly permits prosecution of any "pending suit or proceeding" against a dissolved corporation.[24] As in the *McComb* case, so here, dissolution of the corporate defendant *pendente lite* cannot be used to thwart plaintiff's equitable rights.

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[24] Flack's Ann. Code, Art. 23 § 78 (1951). See also, *Johnson-Battle Lumber Co.* v. *Emanuel Lumber Co.*, 126 S. W. 861 (Ga. 1925).

Plaintiff complains also of the defendant's activities in New Jersey, West Virginia, Virginia, Pennsylvania, Ohio, Massachusetts, Delaware, Connecticut and Maryland. Proof is lacking, however, that the defendant is making resales in any of the said states.

A decree for an injunction in accordance with this opinion may be submitted.

The foregoing shall constitute Findings of Fact and Conclusions of Law in accordance with Fed. R. Civ. P. 52 (a).

Dated: September 29, 1956.

Alexander Bicks,
U.S. District Judge.

208 **Stipulation of Documents and Facts Before the Trial Court**

Mr. Barton: Your Honor, the plaintiff and the defend- and have agreed to a stipulation of the facts in this case and there has been prepared a stipulation identifying the documents and agreeing on the facts in the case, and that stipulation is signed by both ~~parties.~~ And I should like now to read the stipulation into the record.

It Is Hereby Stipulated And Agreed by counsel for plaintiff and defendant, for the purposes of this action and for no other purpose, that the documents annexed hereto and described in Paragraph A are genuine and that the statements of fact contained in Paragraph B are true, as follows:

A. *Documents:*

1. Mailing piece addressed to Margaret J. Ralph, 242 Park Avenue, Lyndhurst, New Jersey, bearing the return address of Masters Mail Order Co. of Washington, D. C. Inc., 425 Seventh St., N.W., Washington, D. C., labeled "Is it a Crime to Give a Bargain?" annexed hereto as Exhibit A.

2. Mailing piece addressed to Mrs. E. G. Lowy, 125
209 Riverside Drive, New York 24, New York, bearing the return address of Masters Mail Order Co. of Washington, D. C. Inc., labeled "Is it a Crime to Give a Bargain?", annexed hereto as Exhibit B.

3. Mail order form directed to defendant, Masters Mail Order Co. of Washington, D.C. Inc., marked "J. C. Ludden. 6/4/54, Plaintiff's Exhibit 1 for identification;" annexed hereto as Exhibit C.

4. Mail order form directed to Masters Mail Order Co. of Washington, D. C., with the name "Andrew R. Cebulski, 93 Barnsdale Avenue, Buffalo 24, New York," typed in the blank labeled "Sold to." annexed hereto as Exhibit D.

5. Letter on the letterhead of Masters, Inc., addressed to Andrew R. Cebulski, marked as Plaintiff's Exhibit 5 for Identification, annexed hereto as Exhibit E.

6. Letter on the letterhead of Masters, Inc., addressed "Dear Patron" and reading in part: "Thank you for your recent mail order for:" annexed hereto as Exhibit F.

7. Catalog and mail order form addressed to
210 "Patron, Letter Carrier Route, Local" bearing the return address of the defendant, and marked "Plaintiff's Exhibit 3 for Identification," annexed hereto as Exhibit G.

8. Mailing piece addressed to "Patron, Letter Carrier Route, Local," bearing the return address of Masters, Inc., 66 West 48th Street, New York 36, New York, marked "Plaintiff's Exhibit 6 for Identification," and "Jane C. Ludden 6/4/54," annexed hereto as Exhibit H.

9. Photostatic copy of a mail order form issued by defendant, Masters Mail Order Company, Washington, D. C. Inc., dated April 5, 1954, bearing the name "Bernard M. Madon, 104-51 111th Street, Richmond Hill, New York," and directing the shipment, C.O.D., by the defendant of one General Electric steam iron, Model No. F-50, for the price of $14.21, annexed hereto as Exhibit I.

10. Duplicate original invoice bearing the name Masters Mail Order Company of Washington, D. C., covering one General Electric steam iron, Model No. F-50, shipped C.O.D. from Washington, D. C. to Bernard Madon, at the aforesaid address in New York, annexed hereto as Exhibit J.

211 11. Photostatic copy of a mail order form issued by defendant, Masters Mail Order Company of Washington, D. C., dated April 15, 1954, directing the shipment by defendant, C.O.D., of a General Electric iron, Model No. F-33, for $9.71, to Gladys Nicholson, 159 Lexing-

ton Avenue, New York, 16, New York, annexed hereto as Exhibit K.

12. Duplicate original invoice bearing the name of the defendant, Masters Mail Order Company of Washington, D. C., covering the shipment by defendant from Washington, D. C., C.O.D., of one General Electric iron, Model No. F-33, for $9.71, to Gladys Nicholson at the aforesaid address in New York, annexed hereto as Exhibit L.

13. Photostatic copy of a mail order form issued by defendant, Masters Mail Order Company of Washington, D. C. Inc., directing the shipment by defendant, C.O.D., of a General Electric toaster, Model No. T-82, for $17.96, to Barbara Joanne London, 27 West 84th Street, New York, New York, annexed hereto as Exhibit M.

14. Duplicate original invoice covering the shipment by defendant from Washington, D. C., C.O.D., of a
212 General Electric toaster, Model No. T-82, to Barbara London at the aforesaid address in New York, annexed hereto as Exhibit N.

15. Photostatic copy of mail order form issued by defendant, Masters Mail Order Company of Washington, D. C. Inc., dated April 19, 1954, directing the shipment by defendant, C.O.D., of a General Electric toaster, Model No. T-82, for $17.96, to Mary E. Burke, 154-03 58th Avenue, Flushing 55, New York, annexed hereto as Exhibit O.

16. Photostatic copy of a mail order form issued by defendant, Masters Mail Order Company of Washington, D. C. Inc., dated April 14, 1954, directing the shipment by defendant, C.O.D., of a General Electric portable mixer, Model No. M-10, for $14.95, to Henrietta Faerber, 36 East 28th Street, New York, New York, annexed hereto as Exhibit P.

17. Duplicate original invoice bearing the name Masters Mail Order Company of Washington, D. C., covering the shipment by defendant from Washington, D. C. C.O.D.,

of one General Electric portable mixer, Model No.
213 M-10, for $14.96, to Henrietta Faerber at the aforesaid address in New York, annexed hereto as Exhibit Q.

18. Photostatic copy of a letter signed by Natalie Quick, 68 Day Avenue, Tenafly, New Jersey, dated April 22, 1954, directed to the defendant, Masters Mail Order Company of Washington, D. C., annexed hereto as Exhibit R.

19. Duplicate original invoice bearing the name Masters Mail Order Company of Washington, D. C., covering the shipment by defendant from Washington, D. C., C.O.D., of one General Electric iron, Model No. F-33, for $9.71, to Natalie Quick at the aforesaid address in New Jersey, annexed hereto as Exhibit S.

20. Carbon copy of a letter from Mrs. F. Eleanor Smith of 116 Columbus Drive, Tenafly, New Jersey, dated April 22, 1954, addressed to Masters Mail Order Company of Washington, D. C. Inc., annexed hereto as Exhibit T.

21. Duplicate original invoice bearing the name
214 Masters Mail Order Company of Washington, D. C., covering the shipment by defendant from Washington, D. C., C.O.D., of one General Electric travel iron, Model No. F-38, for $9.71, to Mrs. F. Eleanor Smith at the aforesaid address in New Jersey, annexed hereto as Exhibit U.

22. Photostatic copy of a mail order form issued by Masters Mail Order Company of Washington, D. C., dated April 20, 1954, directing the shipment by defendant, C.O.D., of a General Electric portable mixer, Model No. M-10, for $14.96, to Mrs. Louise Mackey of 138 Jefferson Avenue, Emerson, New Jersey, annexed hereto as Exhibit V.

23. Duplicate original invoice bearing the name Masters Mail Order Company of Washington, D. C., covering the shipment from Washington, D. C., by defendant, C.O.D.,

of one General Elertric portable mixer, Model No. M-10, for $14.96, to Mrs. Louise Mackey at the aforesaid address in New Jersey, annexed hereto as Exhibit W.

24. Letter dated April 23, 1954 from Norman R.
215 Neubauer of 157 Ramsdell Avenue, Buffalo 23, New York, addressed to "Masters", 66 West 48th Street, New York, New York annexed hereto as Exhibit X.

25. Photostatic copy of a letter signed by Andres R. Cebulski of 93 Ramsdell Avenue, Buffalo 24, New York, addressed to "Masters", 66 West 48th Street, New York, New York, annexed hereto as Exhibit Y.

26. Copy of a Fair Trade Agreement dated September 17, 1952 between General Electric Company and Abercrombie & Fitch, a New York retailer, annexed hereto as Exhibit Z.

27. Copy of a Fair Trade Agreement dated September 8, 1952 between General Electric Company and William S. Rich & Son, Inc., a New Jersey retailer, annexed hereto as Exhibit AA.

28. Copy of a Fair Trade Agreement dated September 19, 1952 between General Electric Company and Haynes Company, a West Virginia retailer, annexed hereto as Exhibit BB.

29. Copy of a Fair Trade Agreement dated December 11, 1952 between General Electric Company and Guy Smith Hardware, a Virginia retailer, annexed hereto as Exhibit CC.

30. Copy of a Fair Trade Agreement dated October 13, 1952 between General Electric Company and Charles H. Edenborn, Inc., a Pennsylvania retailer, annexed hereto as Exhibit DD.

216 31. Copy of a Fair Trade Agreement dated September 13, 1952 between General Electric Company and the Herringshaw Co., an Ohio retailer, annexed hereto as Exhibit EE.

32. Copy of a Fair Trade Agreement dated September 10, 1952 between General Electric Company and Andrew J. Lloyd Company, a Massachusetts retailer, annexed hereto as Exhibit FF.

33. Copy of a Fair Trade Agreement dated October 3, 1952 between General Electric Company and W.J. & J. W. Thoroughgood, a Delaware retailer, annexed hereto as Exhibit GG.

34. Copy of a Fair Trade Agreement dated September 22, 1952 between General Electric Company and Dell's, Inc., a Connecticut retailer, annexed hereto as Exhibit HH.

35. Copy of a Fair Trade Agreement dated September 9, 1952 between General Electric Company and Blum's, Inc., a Maryland retailer, annexed hereto as Exhibit II.

36. Copies of price schedules issued by the plaintiff during the period January 1, 1954 and June 2, 1954,
217 pursuant to the aforesaid Fair Trade Agreements, establishing minimum retail resale prices for certain appliances listed therein, annexed hereto as Exhibit JJ.

B. *Statements of Fact:*

1. The Small Appliance Division of the plaintiff, General Electric Company (hereinafter referred to as "GE") is engaged in the business of manufacturing electric housewares, clocks, automatic blankets, fans and heating pads (hereinafter called "said appliances") and is selling said appliances throughout the States of New York, New Jersey and other States of the United States having fair trade laws, under its trade-mark "General (GE) Electric".

2. GE has expended large sums of money in promoting and advertising said appliances, and has established a valuable reputation and good-will for its said appliances and for the trade-mark under which they are produced and sold.

3. Pursuant to the New York General Business Law, Section 369-a et seq., the Revised Statutes of the State of New Jersey, Sections 54-43 et seq., and the similar fair trade laws of divers other States of the United States, GE has entered into over 12,000 written fair trade agreements with retailers, including over 1,200 in New York and New Jersey alone.

218 4. Exhibits "Z" to "II", inclusive, are true copies of valid existing fair trade agreements entered into by GE with retailers respectively located in the States of New York, New Jersey, West Virginia, Pennsylvania, Ohio, Massachusetts, Delaware, Connecticut and Maryland, all of which States have fair trade laws in effect. Exhibit JJ hereto are true copies of price schedules issued pursuant to said agreements.

5. Said agreements (Exhibits "Z" to "II", inclusive) are all in substantially the same form and under said agreements GE had and has the right to, and did, stipulate minimum retail resale prices for said appliances.

6. The appliances which are the subject matter of said agreements and which bear the GE trade-mark "General (GE) Electric" are in fair and open competition in the States of New York, New Jersey and other States of the United States having fair trade laws with appliances of the same general class produced by others.

7. GE has systematically and repeatedly given notice of the existence of said agreements and the uniform minimum retail resale prices in effect thereunder to in excess of 175,000 known retailers of said appliances.

8. GE has diligently and vigorously enforced said agreements by a widespread program of shopping to ob-
219 tain information as to the observance of its stipulated retail resale prices, and where necessary has instituted legal action to secure compliance.

9. GE, since July 14, 1952, has instituted in excess of 834 such actions in twenty different States, including 410 in New York and New Jersey.

10. One of such actions was instituted in the Supreme Court of the State of New York on November 6, 1952, against Masters, Inc., a New York retailer, whose principal place of business is located at 66 West 48th Street, New York, New York. In that action an injunction *pendente lite* was issued on December 17, 1952, enjoining Masters, Inc. from violating GE's fair trade agreements. Subsequently, on January 20, 1953, Masters, Inc. was fined $750.00 for violating that injunction, which determination was subsequently modified by the Appellate Division of the New York Supreme Court on May 4, 1953 to impose a fine of $250. On February 25, 1953, Masters, Inc. was fined $1,250 for violating that injunction.

11. At the time of the institution of that action, and continuously since that time, Stephen J. Masters has been the President of Masters, Inc.

12. The defendant was organized on December 15, 1953, under the laws of the State of Maryland. At all
220 times all of its outstanding capital stock was owned by Masters, Inc. Masters, Inc. paid $10,000 for such stock by a check dated March 19, 1954. As of October 18, 1954, defendant was dissolved as a Maryland corporation. Since that date the business of defendant, as described below, has been carried on by a corporation bearing the same name but organized under the laws of the District of Columbia on June 18, 1954, with a capital stock of $5,000 provided by Masters, Inc. On October 11, 1954, the assets of defendant were purchased, subject to its liabilities, by the District of Columbia corporation for $5,000. The re-incorporation was undertaken after Congress, in June, 1954, had passed a modern corporation law for the District of Columbia, at the same time repealing the previous antiquated statute. Except for qualifying shares of the

trustees of the District of Columbia corporation, all of the stock of defendant is owned by Masters, Inc.

13. On or about March 15, 1954, the defendant herein opened a retail store at 425 Seventh Street, N.W., Washington, D. C., in premises consisting of a basement, a main floor and two upper stories. These premises were leased for a period of one year with an option to renew. The lease since has been renewed. The store is the only
221 one maintained by defendant. In it defendant maintains an inventory of various types of merchandise, including merchandise manufactured by GE. All such merchandise, including that manufactured by GE, is available for sale over the counter and by mail.

14. In establishing defendant's place of business in the District of Columbia, Masters, Inc. and defendant had the intention, among other things, to engage in a mail order business from the District of Columbia with consumers located in all States of the United States, including those with fair trade laws, at prices which were below those fixed in fair trade contracts authorized by such laws, but which were profitable to defendant. Counsel for Masters, Inc. and defendant had advised that a mail order business with consumers in fair trade States was lawful.

15. From its place of business in the District of Columbia, defendant has made shipments by mail directly to consumers in various States of the Union at prices which are below the prices which GE has stipulated in its fair trade agreements with retailers.

16. Defendant's sales of GE merchandise to consumers in other States have been made pursuant to orders received in the District of Columbia from such consumers in other States and have been filled by direct shipments originating from the District of Columbia, either by mail
222 or by other carriers.

17. Since the opening of defendant's store in the District of Columbia, more than two-thirds of its aggregate sales

have consisted of over the counter sales. During the period March 15, to June 2, 1954, such aggregate sales were in the approximate amount of $60,000.

18. GE products sold by defendant have been acquired in part from Masters, Inc. and in part through purchase from distributors located in the District of Columbia, including General Electric Supply Company, a division of General Electric Distributing Corporation, a wholly-owned subsidiary of GE, which is one of seven franchised GE, distributors in the District of Columbia.

19. Defendant's store in the District of Columbia is under the supervision of an employee who is occupied full time with his duties pertaining to that store. In addition to the supervision, there are four other employees occupied full time in transacting the business of that store, including salesmen, shipping clerks and secretarial help.

20. Defendant had knowledge of the existence of the aforesaid fair trade agreements entered into by GE and various retailers in New York, New Jersey and the divers other States having similar fair trade laws prior to the commencement of business by the defendant.

21. Defendant had knowledge of the existence of the minimum retail resale prices stipulated by GE for said appliances under the aforesaid agreements prior to the acquisition by the defendant of any of the said appliances.

22. During the period December 15, 1953, to June 2, 1954, the following residents of New York (all of whom were officers, stockholders, employees, directors or agents of Masters, Inc.) held the offices shown beside their names in defendant corporation:

Stephen J. Masters	President
Anthony Masters	Vice President
Winifred Masters	Secretary
Vincent Bongiorno	Treasurer

23. During the aforesaid period, all of said officers of defendant occupied offices on the premises of Masters, Inc., at 66 West 48th Street, New York, New York, which were the same offices occupied by them as officers, directors, employees or agents of Master, Inc. in their respective capacities with Masters, Inc.

24. During the aforesaid period, the following books and records of defendant were kept at 66 West 48th Street, New York, New York.

Cash receipts and cash disbursements
General ledger
Unpaid bills file
224 Duplicate sales tickets.

During the aforesaid period, the following books and records of defendant were maintained by the defendant in Washington, D. C.:

Itemized record of daily receipts
Record of all bank deposits
Record of all orders shipped or delivered
Record of time payment sales (over the counter only)
Record of open charges (over the counter only)
All correspondence files
Purchase orders
Warehouse storage inventory record
Merchandise receiving record
Mailing lists and files

25. During the aforesaid period, defendant's supervisor in Washington, D. C., forwarded a daily report to its officers in New York, showing receipts, cash disbursements, and shipments.

26. During the aforesaid period, defendant's President, Stephen J. Masters, was the only person authorized to sign checks on its behalf and he signed all checks which it issued. All bills received by defendant in Washington, D. C., were forwarded for payment to its Presi-

dent at 66 West 48th Street, New York, New York, and were paid by check signed by him and drawn on defendant's bank account in The Bank of Commerce and Savings, Washington, D. C. During that period defendant made only petty cash payments from its store in Washington, D. C. for postage and postage due, stationery
225 and cleaning supplies, express and freight charges and salary advances to employees.

27. During the aforesaid period Stephen J. Masters visited Washington, D. C., in connection with defendant's business on three occasions, in each case arriving and leaving on the same day. Otherwise he supervised defendant's business by regular daily telephone calls and by mail. During the same period none of defendant's other officers visited Washington, D. C., on its business.

28. All policy decisions affecting defendant's business during the aforesaid period were made at the offices of its officers on the premises of Masters, Inc. at 66 West 48th Street, New York, New York (except those made in Washington, D. C., on the occasion of the aforementioned visits of Stephen J. Masters). Defendant's supervisor in Washington had discretion in effectuating those policies.

29. Defendant's President had supervision and control of the preparation and publication of the mailing piece, of which Exhibits A and B attached hereto are specimens. Said supervision and preparation was principally carried out in his office at 66 West 48th Street. Exhibits A and B were respectively received by the addressees in New Jersey and New York via United States mail originating in Washington, D. C.

226 30. 325,000 copies of said mailing piece were initially printed by Thompson Printing Company of 250 West 54th Street, New York. They were delivered to Masters, Inc., in New York, which paid $1,803.01 for the printing. This amount was subsequently billed to defend-

ant on March 9, 1954 and April 10, 1954 and was paid by defendant on November 18, 1954.

31. At the request of Stephen J. Masters, President of defendant and Masters, Inc., one of the employees of Masters, Inc. named William Fishman caused 300,000 copies of this mailing piece to be addressed in New York to persons on the mailing list of Masters, Inc. Addressograph plates owned by Masters, Inc. were used for this purpose.

32. Subsequently, these 300,000 copies of the mailing piece were shipped by truck to Washington, D. C., and from there were mailed to prospective customers in New York, New Jersey and other fair trade States. The mailing piece offered GE appliances for sale at less than its fair trade prices, when ordered by mail from defendant in the District of Columbia. Masters, Inc. paid the Postmaster of Washington, D. C., $3,000 for the postage charges incurred in mailing the 300,000 copies and, subsequently, billed
227 defendant therefor on March 4, 1954, for that cost and was repaid on March 29, 1954.

33. The 300,000 copies of this mailing piece were delivered by Masters, Inc. to defendant in Washington, D. C., along with a shipment of merchandise and defendant was never separately billed by Masters, Inc. for the delivery of said mailing pieces.

34. Defendant's President, from his office in New York also supervised and controlled preparation of defendant's order blanks, of which specimens are attached hereto as Exhibits C, D, I, K, M, O and P. This was initially printed by Thompson Printing Company of New York in 10,000 copies. A bill for this printing was initially paid by Masters, Inc. which subsequently, on July 1, 1954, billed defendant for the same but has not yet been paid. A subsequent printing of 5,000 copies was ordered by defendant and paid for by it on August 10, 1954.

35. Part of the copies of this order blank were sent to defendant for its use in Washington, D. C. The remainder

were retained by Masters, Inc., which kept them behind the appliance counter at its place of business in New York City, where it had an appliance display.

36. The copies of the aforesaid order blank
228 retained by Masters, Inc. were distributed by employees of Masters, Inc. at its New York store to persons who sought to buy GE appliances at less than fair trade prices or who asked for order blanks for "your Washington store." Master's employees were instructed to inform such persons that if they so desired they could obtain GE fair traded appliances at less than fair trade prices from defendant by mail orders sent to the District of Columbia.

37. Stephen J. Masters, President of defendant and Masters, Inc., supervised preparation of the letter, of which specimens are attached hereto as Exhibits E and F. It was printed in 1,000 copies by Graphic Letter Service of New York City and paid for by Masters, Inc., pursuant to a bill received on February 24, 1954.

38. During the period December 15, 1953 to June 2, 1954, Masters, Inc. sent copies of this letter to persons who attempted to make mail order purchases from it of GE appliances at less than the fair trade price. The letter was accompanied by copies of defendant's mail order form with the name of the mail order patron typed in by an employee of Masters, Inc. but which was otherwise left blank. Exhibit D is a sample of such a blank pre-
229 pared by Masters, Inc. Exhibit F is a sample of the letter, with a written notation made by an employee of Masters, Inc.

39. Exhibit G is a sample of a catalogue and mail order form of defendant which was prepared by William Fishman, an employee of Masters, Inc., acting under the supervision and control of defendant's President, at his office in New York City. It was printed by Thompson Lithograph Service of New York City. The original printing

was 110,800 copies, the cost of which was billed directly to and paid by defendant on August 10, 1954. A subsequent printing, comprising 104,000 copies, was billed to and paid by Masters, Inc., which billed defendant therefor but has not yet been paid.

40. Masters, Inc. and defendant contracted in New York City with Circulation Associates, 226 West 56th Street, New York City, for tying, binding and mailing costs of Exhibit G (other than postage). Under the "patron mailing system", they were mailed from Washington, D. C., to "Patrons" in selected towns in Pennsylvania.

41. Exhibit H is a mailing piece offering merchandise for sale at specified prices only by Masters, Inc. 230 It was prepared under the supervision and control of Stephen J. Masters, President of Masters, Inc. and of defendant. It was addressed to "Patron, Letter Carrier Route, Local," and bore the return address of Masters, Inc.

42. Copies of Exhibit H were distributed by hand on the premises of Masters, Inc. in New York City.

43. Schedule A annexed hereto shows sales of GE appliances by Masters, Inc. to defendant during the period February 16, 1954, to September 14, 1954. During the same period defendant purchased merchandise manufactured by GE in greater quantities from GE's franchised distributors in the District of Columbia.

44. As of June 2, 1954, defendant had not paid Masters, Inc. for its purchases of GE appliances but subsequently made payments therefor on November 18, 1954, pursuant to bills previously rendered.

45. During the period December 15, 1953, to June 2, 1954, defendant

(i) sent mailing pieces and order blanks, of which Exhibits A, B, C, D, G, I, K, M, O and P are specimens, from Washington, D. C., listing GE appliances at less than fair

trade prices, to residents of the following States with fair trade laws in effect, and

231 (ii) sold GE appliances by mail from Washington, D. C., to residents of the following States with fair trade laws in effect at less than fair trade prices:

New York
New Jersey
West Virginia
Virginia
Pennsylvania
Ohio
Massachusetts
Delaware
Connecticut
Maryland

46. All shipments listed in the foregoing paragraph 45 were made pursuant to mail orders received directly from the purchaser at defendant's place of business in Washington, D. C. All such orders were filled with merchandise shipped in original factory cartons from Washington, D. C. The cost of such shipments was paid by defendant. Some of such orders were filled on a C.O.D. basis, but the great majority were filled pursuant to orders which were accompanied by prepayment of the purchase price.

47. In the case of each of such mail order sales, including C.O.D. sales, the contract of sale bore the notation "Sold to" immediately preceding the purchaser's name.

In each case, also, the contract of sale included as one
232 of its terms that the purchaser could return the article purchased for refund or exchange at any time within thirty days of receipt by returning the article in its original condition and carton. In approximately five cases, defendant refunded the purchase price upon the customer's return of the merchandise.

48. In approximately five cases, the customer refused to accept merchandise shipped by defendant on a C.O.D.

basis. In such cases, defendant did not seek to collect the purchase price.

49. During the months of April and May 1954, GE appliances were purchased below fair trade prices pursuant to mail orders prepared and sent to defendant in Washington, D. C., by eight residents of New York or New Jersey, who were then employed by Ralph Piper, a private investigator of New York City, who had been hired by GE to investigate defendant. In each case the goods were supplied to the purchaser by mail from Washington, D. C., on a C.O.D. basis. In each case the purchaser paid the purchase price, plus C.O.D. charges, and defendant prepaid the postage.

50. The articles purchased, the fair trade price, the purchase price and the annexed exhibits relating thereto are shown in the following table:

233

Article	*Fair Trade Price*	*Defendant's Price*	*Related Exhibits*
G.E. Steam Iron, Model F-50	$17.95	$14.21	I & J
G.E. Iron, Model No. F-33	$12.50	$9.71	K & L
G.E. Toaster Model No. T-82	$21.95	$17.96	M & N
G.E. Toaster Model No. T-82	21.95	$17.96	O
G.E. Portable Mixer, Model No. M-10	$19.50	$14.96	P & Q
G.E. Iron, Model No. F-33	$12.50	$9.71	R & S
G.E. Iron, Model No. F-38	$12.50	$9.71	T & U
G.E. Portable Mixer, Model No. M-10	$19.50	$14.96	V & W

51. Of these eight orders, two were sent in the form of a letter from the purchaser; one on an order blank of

defendant "given" to the purchaser; another on a similar blank received from defendant by mail; and four on such blanks obtained by visits to the store of Masters, Inc. at 66 West 48th Street in New York City.

52. In six instances order blanks issued by defendant were received by investigators employed by Ralph
234 Piper on visits to the premises of Masters, Inc., in New York City, and the substance of the conversations preceding the procurement of the forms were as follows: ("I" indicating the Investigator and "Clk" employees of Masters, Inc.)

(a) *Investigator Bernard M. Madon*

"I: Where are your GE toasters?

Clk: We don't have it in stock. (He started walking away.)

I: You mean you don't carry GE?

Clk: You have to get them through the mail in Washington; it's a fair trade item.

I: Can I get a mail order blank here?

Clk: Yes, wait, I'll get you one.

(The clerk handed me a mail order form.)"

(b) *Investigator Gladys Nicholson.*

"I: How is the new Washington store doing?

Clk No. 1: Fine, but it is a mail order house—you know a lot of items are fair-traded and we cannot sell them here, but you can order them from Washington and get your discount.

I: I want to order something. May I have an order blank and price list?

Clk No. 1: I cannot give you one. You can write and they will send you one.

235 I: But I want to order it now.

Clk No. 1: You can see Mr. Vincent over in the middle of the floor. He may give you one.

Clk No. 2: May I help you?

I: I am looking for Mr. Vincent.

Clk No. 2: He is out for lunch. Can I help you?

I: I want to order something from your Washington store.

Clk No. 2: Go over to a clerk there at the back wall by the appliances and he will give you an order blank."

(c) *Investigator Jane C. Ludden.*

"I: I'd like that GE portable mixer, please.

Clk: It's $19.50. All GE products are price fixed by law. No discounts. (The clerk pointed to a shelf where a GE steam iron, Model No. F-50 was plainly marked $17.95.)

I: Damn!

Clk: Why?

I: I've a mother.

Clk: Don't we all?

I: Yes, but mine has the GE mixer and so, of course, must have the portable to complete the picture.

Clk: Just a minute. (The clerk took a white printed sheet from under the counter and folded it,
236 placing it in folds of a price list advertising Master's 18th anniversary sale which I had received upon entering the store and which I had placed on the counter.)

Read this after you leave the store. It will answer your problem."

(d) *Investigator Jean Joyner.*

"I: I want a GE steam iron.

Clk: We don't keep those on display because they are fair traded and we can't sell below the list price, which is $17.95.

I: Don't you have a store in Washington?

Clk: Yes you can do that.

(The clerk reached for an order blank.)

I: Do you give discounts there?

Clk: Yes. (handing me an order blank) Tuck this under your arm.

I: Thank you.

Clk: So many people ask for a GE. I don't know why it is so popular. There are other makes which are superior."

(e) *Investigator Barbara J. London*

"Clk: May I help you?

I: I was interested in buying a toaster. However, you don't have the toaster I want. Could I possibly have an order blank for the Washington store?"

237 (f) *Investigator Michael Calogridis.*

"I: I am in the market for a GE steam iron.

Clk: No discount on that.

I: How much is it?

Clk: $17.95; they're over there at that other counter.

I: Thanks.

(I walked over to the second counter and approached a second clerk who wore a circular button pinned to his shirt bearing the name 'M. Weiss.' In substance, the following was my conversation with the second clerk.)

I: I understand you have a GE steam iron over here.

Clk: That's right. Here you are. That will be $17.95.

I: Don't you have a store in Washington?

Clk: Yes, that's right.

I: You give discounts there, don't you?

Clk: That's right.

I: Let me have an order blank please.

Clk: Here you are, sir.

I: Thanks."

53. During the months of April and May 1954, 238 two residents of Buffalo, New York, who were employees of Pinkerton National Detective Agency, hired by GE for the purpose, wrote Masters, Inc., at its premises at 66 West 48th Street, New York City. One requested a General Electric fan, Model No. T-1, and the other a General Electric mixer, Model No. M-12, at the prices specified in defendant's price list. Checks reflecting such prices were enclosed with the letters, in the amount of $56.21 for the fan and $33.71 for the mixer. These letters are annexed as Exhibits X and Y.

54. Masters, Inc. refused to fill either of the orders described in the foregoing paragraph 53. On the reverse side of the letter ordering the fan, an employee of Masters, Inc. wrote:

"Return to sender. We can't discount GE T-1. No doubt he means Washington store."

This letter and the enclosed check were returned to the sender, along with a letter from Masters, Inc., a specimen of which is annexed as Exhibit F.

55. The letter and check for the mixer were also returned to the sender, along with a similar form letter, annexed hereto as Exhibit E, and a copy of defendant's mail order form, annexed hereto as Exhibit D. An em-
239 ployee of Masters, Inc. had typed in the name of the sender following the phrase "Sold To" on Exhibit D but had made no other notation on the form.

WHITE & CASE
Attorneys for Plaintiff

JOSEPH F. RUGGIERI
Attorneys for Defendent

Schedule A

240 Sales—General Electric Products.
From Masters

To Masters Mail Order Company

Date	*Charge No.*	*Amount*
1954		
2/16	DO3160	$ 199.70
2/25	DO3297	397.98
2/25	DO3298	53.13
3/4	DO3612	138.00
3/11	DO3705	227.00
3/22	DO3584	72.66
3/16	DO3786	307.92
3/16	DO3787	390.00
3/16	DO3790	34.50
3/24	DO3813	25.55
3/31	DO3923	80.88
4/10	DO4167	229.95
4/19	DO4301	742.82
4/24	DO4388	9.48
4/27	DO4631	127.16
4/29	DO4657	52.36
5/11	DO4807	4.46
5/21	DO5070	26.29
7/2	DO6044	2.24
7/13	DO6231	91.98
4/23	DO4383	390.00
7/22	DO6461	143.79
7/28	DO6565	56.10
8/13	DO6858	6.52
6/5	DO5367	375.00
8/31	DO7224	47.00
8/27	DO7379	98.64
9/4	DO7611	899.88
4/7	DO7617	24.10
9/14	DO7765	413.34
		$5,732.87

241 Mr. Barton: I offer as plaintiff's Exhibits Exhibits A through JJ, which are identified in the stipulation.

(Plaintiff's Exhibits A-JJ received in evidence.)

Mr. Weslan: No objection.

The Court: Both sides rest.

Mr. Barton: Plaintiffs moves that the pleadings be conformed to the proof.

Mr. Weslan: Defendant so moves, too.

The Court: Any objection?

Mr. Weslan: No objection.

Mr. Barton: No objection on the other side.

The Court: Motion then granted, by consent.

Mr. Weslan: Now, as far as the defendant is concerned, the defendant moves that the pleadings be conformed to the proof, or whatever pleadings were introduced on behalf of the defendant.

Mr. Barton: No objection.

Plaintiff rests.

The Court: The defendant's motion is granted. Both sides rest.

Mr. Weslan: That is right.

242 The Court: This matter is to be finally submitted by both sides on or before March 18, and counsel may arrange to exchange original memoranda, reply memoranda at any time before then so long as by March 18th the matter is finally submitted; and the matter is now set down for March 22nd, at an hour to be subsequently fixed on that day, for oral argument.

Mr. Barton: Very good your Honor. I have discussed the matter with Mr. Diamond, who is trial counsel for the defendant, and we have agreed that we will not have reply memoranda; in other words, we have so fully briefed the question before that we will submit memoranda on the 18th.

The Court: All right.

Exhibit Z

Not for use in the District of Columbia or in the States of Florida, Missouri or Texas

GENERAL ELECTRIC COMPANY

Small Appliance Division
Bridgeport, Conn.

Fair Trade Agreement

AGREEMENT made this 17th day of Sept. 1952 at Bridgeport Connecticut, by and between General Electric Company, a New York Corporation, (hereinafter called General Electric,) acting through its Small Appliance Division and Abercrombie & Fitch Co., 19 East 45th Street, New York, New York (hereinafter called Dealer).

WHEREAS, the General Electric products now or hereafter manufactured and made subject to this agreement are and will be distributed under General Electric's trademark or brand, GENERAL ELECTRIC in free and open competition with products of the same general class produced by others, and

WHEREAS, Dealer is engaged in the sale of such products, and

WHEREAS, the parties, each on its own behalf, desire to avail themselves of the Fair Trade Acts and the Acts of Congress now and hereafter in effect, particularly of the Fair Trade Act of the State in which Dealer sells the General Electric products,

NOW, THEREFORE, in consideration of the premises, the parties agree as follows:

1. Dealer hereby acknowledges receipt of the list of fair trade prices on General Electric products, attached hereto and made a part hereof, establishing the minimum retail prices for the said products described therein.

2. Dealer agrees that, except as otherwise specifically permitted by any applicable Fair Trade Act or other similar statute, it:

a. will not advertise, offer for sale, or sell any of the said General Electric fair traded products at less than the minimum retail prices stipulated by General Electric, plus in each sale the amount of all applicable sales and excise taxes,

b. will not in connection with any sales of said fair traded products make any refunds, discounts, allowances, or concessions of any kind or character which will have the effect of decreasing its selling price below the minimum retail prices so stipulated by General Electric,

c. will not advertise, offer for sale, or sell any of said fair traded products for which minimum retail prices have been stipulated by General Electric hereunder, in combination with other merchandise at a single, combination or joint price.

3. General Electric may, from time to time, in its absolute discretion, withdraw any or all of said products from its list of fair trade prices; may add products thereto for which minimum retail prices are stipulated and may change or revise the minimum retail prices for the said products listed therein. In the event of any such withdrawals, additions, changes and revisions in said list, General Electric will give prompt notice to the Dealer in writing, by personal delivery or by mail.

4. This agreement shall continue in effect from the date hereof until terminated by either party upon ten day's written notice to the other; provided, however, that in the event of such termination by the Dealer the provisions hereof shall nevertheless apply to such products then in the Dealer's possession; and in any event the Dealer shall not be released from any obligation thereafter in respect to sales of said products imposed upon it by any applicable Fair Trade Act or other statute.

5. This agreement shall not apply to sales made in any state in which the resale price control herein provided for is not lawful under any applicable Fair Trade Act or other statute, or rule of law or public policy.

6. The provisions of this Agreement shall be binding upon the successors and assignees of the parties hereto.

General Electric Company
Small Appliance Division

By /s/ R. E. Boisy
Manager-Marketing WP

Abercrombie & Fitch Co.
Dealer

By /s/ A. M. Schaefler,
Vice-President
Title

Street 19 East 45th Street
City New York
State New York

EXHIBIT F

MASTERS, INC.
for Everything You Need

66 West 48th Street • New York 19, N. Y.
Rockefeller Center's Next Door Neighbor
PLaza 7-2323

Dear Patron:

Thank you for your recent mail order for:

A court injunction obtained against us by the manufacturer of the merchandise you ordered prevents us from selling this merchandise to you at below the Fair Traded List Price arbitrarily fixed by the manufacturer. We regret we can only offer this merchandise to you at the Fair Traded List Price of $

Despite this and other attempts to shackle Free Enterprise and Competition, Masters is and will continue fighting against Price-Fixing by manufacturers so that we may bring you the greatest possible savings.

There are no applicable Fair Trade laws in Washington, D. C. We are reliably informed that

MASTERS Mail Order Company of Washington,
D. C., Inc.
425 Seventh Street, N. W.
Washington 4, D. C.

offers the merchandise you ordered at a large discount. If you are interested in making the purchase through MASTERS Mail Order Co. of Washington, D. C. Inc., please correspond directly with them at the above address.

May we respectfully call to your attention that this unique case does not in any way affect the large savings you can expect on purchases of almost all other famous brands at Masters, Inc. in New York.

Very truly yours,

MASTERS, INC.

√ Check With Masters Before You Buy! √